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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003			CHORBAJI, MONZER R	
			ART UNIT	PAPER NUMBER
			1744	

DATE MAILED: 08/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/029,532

Applicant(s)

LIN, SZU-MIN

Examiner

MONZER R. CHORBAJI

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-9,12,13 and 15-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-9,12,13 and 15-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This final action is in response to the RCE/Amendment received on 07/24/2006 .

Claim Objections

1. Claims 17-21 are objected to because of the following informalities: Claims 17, 19 and 21 depend on canceled claim 2. In this action, the examiner will evaluate claims 17, 19 and 21 as being dependent on claim 1. Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1, 6 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Langford (U.S.P.N. 5,443,801) in view of Younkes (WO 98/03211).

Regarding claim 1, Langford teaches a sterilization system that includes the following: a sealed sterilization container (figure 18, 180) for containing items to be sterilized (col.23, lines 31-32) such that the container has an inlet and an outlet ports

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(col.23, line 29), a source of sterilizing fluid attachable to and detachable from the inlet and the outlet ports (col.23, lines 50-52 and lines 59-64), and the container is sealed from microorganism ingress while disconnected from the source to maintain sterility of the items therein (col.23, lines 59-64). Langford fails to disclose the use of a passive microorganism impermeable closure that includes a covering of a vapor permeable, microorganism impermeable material. Younkes, which is in the art of designing and maintaining medical items in sterile conditions, teaches the use a passive covering that is vapor permeable, microorganism impermeable closure (page 12, lines 29-33 and figure 8, 270). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Langford system by substituting one closure means for another as taught by Younkes since such a substitution results in the use of partial hermetic seal that insures sterility and allows air to be expelled to the outside (page 13, lines 1-5).

Regarding claims 6 and 19, Langford teaches a pressure differential to create flow between the inlet and the outlet ports of the container (col.23, lines 44-45 such that the pump creates a pressure differential for the sterilant flow to occur).

5. Claims 4-5, 7, 17-18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Langford (U.S.P.N. 5,443,801) as applied to claims 1, 6, 19 and further in view of Younkes (WO 98/03211) and Koubek (U.S.P.N. 4,512,951).

Regarding claims 4-5 and 17-18, both Langford and Younkes fail to disclose using vaporous hydrogen peroxide. Koubek, which is in the art of sterilization, teaches using vaporous hydrogen peroxide (col.3, lines 24-25). Thus, it would have been

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obvious to one of ordinary skill in the art at the time the invention was made to modify Langford system by substituting one conventional sterilant for another as taught by Koubek since such a substitution results in increasing the killing rate activity of the sterilant by creating a liquid hydrogen peroxide condensate in the presence of a vacuum (Koubek, col.2, lines 9-15).

Regarding claims 7 and 20, Langford uses a pump for moving the sterilant into and out of the container (col.23, lines 44-45), but fails to teach the use of a fan for creating a sterilant motion. Younkes fails to teach the use of a fan. Koubek, which is in the art of sterilizing medical items by using vaporous hydrogen peroxide, uses a fan (17) for distributing the sterilant. The motion of the fan creates a pressure differential between the inlet and the outlet of the sterilizer. So, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Langford system by substituting one conventional moving means for another as taught by Koubek since such a substitution insures a uniform distribution of the inflowing hydrogen peroxide vapors within the container (Koubek, col.3, lines 63-67).

6. Claims 8 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Langford (U.S.P.N. 5,443,801) as applied to claim 1 and further in view of Younkes (WO 98/03211) and Sanderson (U.S.P.N. 4,754,595).

Regarding claims 8 and 21, both Langford and Younkes fail to teach the use of baffles. Sanderson, which is in the art of vapor sterilization of medical items, teaches the use of baffles (figures 1-2,15). As a result, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Langford system by

including baffles in the container as shown by Sanderson in order to control the flow of the sterilant into and out of the container.

7. Claims 9 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Langford (U.S.P.N. 5,443,801) in view of Younkes (WO 98/03211) and further in view of Wright et al (U.S.P.N. 5,639,031).

With respect to claim 9, the Langford reference teaches a method for sterilizing medical items (col.4, lines 49-68 and col.5, lines 1-11) including the following: placing the items into a sealed container (col.23, lines 31-32), attaching a source of sterilizing fluid to the container (col.23, lines 50-52), flowing the sterilant into the container through a first port and then flowing the sterilant through the container and out through a second port (figure 18, 183A and col.23, lines 50-52), detaching the container and sealing the container the container in order to maintain sterility (col.23, lines 59-64). Langford fails to disclose the use of a passive microorganism impermeable closure that includes a covering of a vapor permeable, microorganism impermeable material and the step of returning the sterilant back to the source. Younkes teaches the use of a passive covering that is vapor permeable, microorganism impermeable closure (page 12, lines 29-33 and figure 8, 270). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Langford method by substituting one closure means for another as taught by Younkes since such a substitution results in the use of partial hermetic seal that insures sterility and allows air to be expelled to the outside (page 13, lines 1-5).

Younkes reference fails to teach the step of returning the sterilant back to the source. Wright, which is in the art of sterilizing medical sharps, teaches the step of returning the sterilant back to the source (col.2, lines 49-52). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Langford method by including a sterilant recycling means as taught by Wright since reusing the sterilant result in lowering the expense of disposing medical waste and preventing ground water pollution (Wright, col.2, lines 11-14).

Regarding claim 15, Langford teaches flowing the sterilant into the container through a first port and then flowing the sterilant through the container and out through a second port (figure 18, 183A and col.23, lines 50-52), but fails to teach returning the sterilant back to the source thereby resulting in a continuous flow between the source and the container. Wright teaches the step of returning the sterilant back to the source (col.2, lines 49-52) such that a continuous flow path between the container (30) and the sterilant source is continuous. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Langford method by including a sterilant recycling means as taught by Wright since reusing the sterilant result in lowering the expense of disposing medical waste and preventing ground water pollution (Wright, col.2, lines 11-14).

8. Claims 12-13 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Langford (U.S.P.N. 5,443,801) in view of Younkes (WO 98/03211) as applied to claims 9,15 and further in view of Wright et al (U.S.P.N. 5,639,031) and Koubek (U.S.P.N. 4,512,951).

Regarding claims 12-13, Langford, Younkes, and Wright all fail to teach using vaporous hydrogen peroxide. Koubek teaches using vaporous hydrogen peroxide (col.3, lines 24-25). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Langford method by substituting one conventional sterilant for another as taught by Koubek since such a substitution results in increasing the killing rate activity of the sterilant by creating a liquid hydrogen peroxide condensate in the presence of a vacuum (Koubek, col.2, lines 9-15).

Regarding claim 16, Langford uses a pump for moving the sterilant into and out of the container (col.23, lines 44-45), but fails to teach the use of a fan for creating a sterilant motion. Younkes and Wright both fail to teach the use of a fan. Koubek uses a fan (17) for distributing the sterilant. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Langford method by substituting one conventional moving means for another as taught by Koubek since such a substitution insures a uniform distribution of the inflowing hydrogen peroxide vapors within the container (Koubek, col.3, lines 63-67).

Response to Arguments

9. Applicant's arguments filed on 07/24/2006 have been fully considered but are found non-convincing.

On page 5 of the Remarks section, applicant argues that, "Younkes falls outside the scope and content of the claimed invention as it is in separate field of endeavor (medical syringes) from the present invention (sterilization containers) and does not pertain to a problem facing applicant." The examiner disagrees since Younkes, which is

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in the art of designing and maintaining medical items in sterile conditions, teaches the use a passive covering that is vapor permeable, microorganism impermeable closure (page 12, lines 29-33 and figure 8, 270). Clearly both Younkes and the instant claims are trying to solve the same problem, which is maintaining the sterility of medical items irrelevant of whether it being a medicinal syringe or not, that requires being sterile until the point of usage. In addition, one of ordinary skill in the art upon reading Younkes would be motivated to modify the device of Langford since by substituting one closure means for another as taught by Younkes results in the use of partial hermetic seal that insures sterility and allows air to be expelled to the outside (page 13, lines 1-5).

On page 5 of the Remarks section, applicant argues that, "Applicant submit that such a motivation comes not from the art but rather from Applicant's specification and is therefore improper." The examiner disagrees since Younkes is in the art of designing and maintaining medical containers in sterile conditions so that the contents therein are maintained sterile. The applicant in the instant claims is trying to achieve the same goal.

Conclusion

10. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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11. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MONZER R. CHORBAJI whose telephone number is (571) 272-1271. The examiner can normally be reached on M-F 9:00-5:30.

13. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, GLADYS J. CORCORAN can be reached on (571) 272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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14. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MRC 


GLADYS J. CORCORAN
SUPERVISORY PATENT EXAMINER